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### III. REMARKS

#### **Format of this Response**

This response is submitted in compliance with the revised format for making amendments to the specification, claims and drawings officially adopted by the USPTO on July 30, 2003, and which is now reflected in 37 C.F.R. §1.121.

If a substitute specification is submitted herein, a clean form and marked-up version are included. Amendments to drawings, if any, are submitted in compliance with 37 C.F.R. §1.84 on replacement sheets as an attachment to this document (with an accompanying detailed explanation of all of the changes with respect to the drawings made in the remarks section of this amendment.

#### Status of Claims :

Amendments of the claims 1, 3, and 5 are presented herein. Claim 2 has been cancelled without prejudice. Claim 22 has been newly added. Thus, claims 1, 3-22 are submitted for reconsideration. No new matter has been introduced with this amendment, which is fully supported by the instant Specification.

#### Statement with Respect to Scope of Amended and Non-Amended Claims

Revisions to the claim set is made in order to streamline prosecution of this case in order to obtain early allowance of embodiments that are presently anticipated to be of commercial significance and in response to the Examiner's restriction requirement which has been made final in the Office Action, and are not made for a purpose of patentability. Any amendment, cancellation, withdrawal or addition made herein with respect to the claims should not be construed in any manner as indicating Applicant's surrender of any subject matter of the application, or surrender of any equivalent to any element asserted in one or more claims. Any

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narrowing which may be evinced with respect to subject matter covered by the claims as a whole, or by one or more claims of the appended claims whether amended, re-represented, or new, when compared to claims previously in the application, should not be interpreted as indicating that the Applicant has generally disclaimed the territory between the original claimed subject matter and the amended claimed subject matter. Amended claims elements are to be construed to include substantial equivalents known to those of ordinary skill in the art. Applicant asserts that any amendments transacted herein are made without prejudice and reserve all rights to prosecute any canceled claims, and claim structures preceding any amendment to a particular claim, and other disclosed (but not presently claimed) embodiments in the application, in future continuation applications, divisional applications, continuation-in-part applications, continuing prosecution applications, requests for continuing examination, re-examination applications and any other application claiming priority to the present application.

**Rejection under 35 USC 112, Second Paragraph**

**Examiner's Position:**

Claim 2 recites the limitation "the contour or silhouette" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 5 recites the limitation "the face/head" in paragraph 1 "the pupils" in paragraph 2 and "the outline" in paragraph 2. There is insufficient antecedent basis for this limitation in the claim. Examiner suggests amending to read "a face/head" "pupils" and "an out line" or changing the word silhouette to outline.

**Applicant's Response:**

Claim 5 has been amended in accordance with the Examiner's suggestions and are believed conformant with the cited statute. In view of the cancellation of claim 2 its rejection is deemed moot.

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***Claim Rejections -35 USC §102***

Claims 1 and 3 are rejected under 35 U. S. C. 102(e) as being anticipated by Leivian (US 2002/0120371) for the following alleged disclosures.

In reference to Claim 1, the Examiner alleges that Leivian discloses a method of response synthesis in a driver assistance system wherein claimed defining and monitoring an object is met by system 100 through sensor fusion module 102, see para. [0024-0028]; further disclosing that the system operates continuously, see para. [0031] and directly, or in other words, instantly, see para. [0039].

In reference to Claim 3, the Examiner alleges that Leivian discloses driver condition data including video or imaging sensors that monitor head, body, hand and feet movements of the driver, see para. [0028]. Accordingly, the driver condition interface 206 uses video and other imaging sensors to provide monitoring on driver blink rate and gaze, see para. [0039].

**Applicant's Response:**

Applicant respectfully disagrees. On the contrary, the cited reference neither discloses nor suggests the presently claimed invention. Applicant respectfully traverses the Examiner's 35 U.S.C. § 102(e) rejections of claims 1-4 as presently amended, in part on the basis that the reference recited does not disclose each of the elements of any of the pending claims. Applicant respectfully finds no correspondence in the Leivian reference for a method of monitoring and tracking the silhouette of an object involved in the vehicle operation as well as determining the pupil reflex of pupils defined within the face/head contours. The rejection of

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cancelled claim 2 is believed moot. The rejection of claims 1, 3 and 4 is deemed improper and its withdrawal is hereby solicited.

***Claim Rejections -35 USC 5 103***

Claims 2 and 4 are rejected under 35 U. S. C. 103(a) as being obvious over Leivian in view of Loraas (US 5931254). The rejection of cancelled claim 2 is believed moot.

In reference to Claim 4, Leivian allegedly discloses driver condition data 116 includes video or imaging sensors that monitor head, body, hand and feet movements of the driver. Although the Examiner admits that Leivian does not disclose scanning or tracking a contour or silhouette of an object. However, the Examiner contends that Loraas compensates for this lack by disclosing a non-contact operator presence sensor wherein controller 86, using detectors 27, does a detailed analysis of the silhouette of the item sense by the detectors, see Col. 7 lns 64-67 and Col. 8 lns 1-9. Therefore, the Examiner is of the opinion that it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the teachings of Loraas into the system of Leivian because silhouette analysis provides faster processing.

**Applicant's Response:**

Applicant respectfully traverses the rejection over the cited references, taken alone or in combination. In the first instance, the references are silent on the programmed definition of a silhouette of face/head of the operational object within a vehicle or vehicle operator. Secondly, the references do not suggest determining pupil position overlying a certain

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face/head contour and monitoring pupil reflex in real-time. Therefore, the rejection of the claims 2 and 4 under 35 U.S.C. §103 is deemed improper and its withdrawal is solicited herewith.

Moreover, newly added method claim 22 is believed free of the cited references which are silent as to the instant contour definition, pupil reflex determination and pupil and contour tracking in real-time.

#### *Allowable Subject Matter*

Applicant acknowledges that the Examiner held that claims 5-21 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U. S. C. 112, 2nd paragraph, set forth in this Office action. In view of the amendment of claim 5, Applicant believes the claims 5-21 in condition for allowance.

#### References cited but not relied on:

Applicant has reviewed the prior art made of record and not relied upon but considered pertinent to the instant disclosure. Shimotani (US 5795306), Burton (US 6575902), Griesinger (US 6097295) and Galiana (US 6091334) do not disclose or suggest the claimed invention. No further comment is deemed necessary at this time.

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CONCLUSION

The application is now believed to be in condition for allowance and an early notification thereof is respectfully requested.

Respectfully submitted,

Dated: August 19, 2005.

  
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